MONTANA LEGISLATIVE HISTORY

Chapter 397 19 81

Bill H 594 S _____ Original bill & history ✓ C

H. Committee on Local Government			S. Committee on Local Government		
Hearing Date(s)	2/10	C	Hearing Date(s)	3/12	C
	2/12	C		3/24	C
	_____	C		3/26	C
	_____	C		_____	C
Date Out	_____	C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

There were no minutes for Gen. Stat Admin.

NEGOTIATE WITH OTHER STATES TO ESTABLISH AGREEMENTS FOR SUBMITTING APPLICATION TO THE RAIL PASSENGER CORPORATION FOR INSTITUTION OF RAIL PASSENGER SERVICE IN THE STATE.

INTRODUCED: 1/31
REFERRED TO COMMITTEE ON STATE ADMINISTRATION: 1/31
ON MOTION, TAKEN FROM COMMITTEE ON STATE ADMINISTRATION AND REFERRED TO COMMITTEE ON HIGHWAYS AND TRANSPORTATION: 2/2
HEARING: 2/10
REPORT: DO PASS, 2/10
2ND READING: 2/14, YEAS: 86; NAYS: 1
3RD READING: 2/17, YEAS: 100; NAYS: 0

TRANSMITTED TO SENATE: 2/17
REFERRED TO COMMITTEE ON HIGHWAYS: 2/18
HEARING: 3/12
REPORT: 3/14, BE CONCURRED IN
2ND READING: 3/18, BE CONCURRED IN
3RD READING: 3/20, YEAS: 48; NAYS: 0

RETURNED TO HOUSE: 3/20
TRANSMITTED TO GOVERNOR: 3/25
ACTION: AMENDATORY VETO, 3/30
GOVERNOR'S AMENDMENTS
HOUSE 2ND READING: 4/9, YEAS: 86; NAYS: 1
ON MOTION, 4/9, RULES SUSPENDED, PLACED ON 3RD READING.
HOUSE 3RD READING: 4/9, YEAS: 93; NAYS: 0

SENATE 2ND READING: 4/13, BE CONCURRED IN
SENATE 3RD READING: 4/14, YEAS: 48; NAYS: 0

TRANSMITTED TO GOVERNOR: 4/17
ACTION: SIGNED, 4/22
CHAPTER 498

HB 594—KEMMIS, NORMAN—REQUIRING LAND DEVELOPMENT AND USE BY GOVERNMENTAL AGENCIES TO CONFORM TO LOCAL ZONING REGULATIONS.

INTRODUCED: 1/31
REFERRED TO COMMITTEE ON LOCAL GOVERNMENT: 1/31
HEARING: 2/10
REPORT: DO PASS AS AMENDED, 2/13
2ND READING: 2/17 YEAS: 83; NAYS: 4
3RD READING: 2/19 YEAS: 95; NAYS: 5

TRANSMITTED TO SENATE: 2/19
REFERRED TO COMMITTEE ON STATE ADMINISTRATION: 2/20
REREFERRED TO LOCAL GOVERNMENT: 3/3
HEARING: 3/12
REPORT: 3/30, BE CONCURRED IN
2ND READING: 3/31, AS AMENDED, BE CONCURRED IN
ON MOTION, 3/31, RULES SUSPENDED, PLACED ON 3RD READING
3RD READING: 3/31, YEAS: 41; NAYS: 9

RETURNED TO HOUSE WITH AMENDMENTS: 3/31
2ND READING: 4/8 YEAS: 73; NAYS: 14
3RD READING: 4/9 YEAS: 86; NAYS: 11

TRANSMITTED TO GOVERNOR: 4/13
ACTION: SIGNED, 4/16
CHAPTER 397

HOUSE BILL NO. 594

INTRODUCED BY KEMMIS, NORMAN

IN THE HOUSE

January 31, 1981	Introduced and referred to Committee on Local Government.
February 14, 1981	Committee recommend bill do pass as amended. Report adopted.
February 16, 1981	Bill printed and placed on members' desks.
February 17, 1981	Second reading, do pass.
February 18, 1981	Correctly engrossed.
February 19, 1981	Third reading, passed. Ayes, 95; Noes, 5. Transmitted to Senate.

IN THE SENATE

February 20, 1981	Introduced and referred to Committee on State Administration.
March 3, 1981	Rereferred to Committee on Local Government.
March 30, 1981	Committee recommend bill be concurred in. Minority report adopted.
March 31, 1981	Second reading, concurred in as amended.
	On motion rules suspended. Bill placed on calendar for third reading this day and allowed to be transmitted on 71st legislative day. Motion adopted.
	Third reading, concurred in as amended. Ayes, 41; Noes, 9.

IN THE HOUSE

April 1, 1981	Returned from Senate with amendments.
April 8, 1981	Second reading, amendments concurred in.
April 9, 1981	Third reading, amendments concurred in. Ayes, 86; Noes, 11. Sent to enrolling.
	Reported correctly enrolled.

HOUSE BILL NO. 594

INTRODUCED BY Dennis Norman

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING LAND DEVELOPMENT AND USE BY GOVERNMENTAL AGENCIES TO CONFORM TO LOCAL ZONING REGULATIONS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definitions. As used in [this act], the following definitions apply:

(1) "Agency" means a board, bureau, commission, department, an authority, or other entity of state or local government.

(2) "Local zoning regulations" means zoning regulations adopted pursuant to Title 76, chapter 2.

Section 2. Local zoning regulations to apply to agencies. The development and use of land held by an agency shall comply with local zoning regulations if:

(1) zoning has been adopted pursuant to Title 76, chapter 2;

(2) zoning has been adopted in compliance with a master plan adopted as provided in Title 76, chapter 1, part 6; and

(3) the application of such zoning does not have the effect of excluding any state or local government institution from the jurisdictional area for which the local zoning regulations have been adopted.

Section 3. Public interest to be considered in review of agency zoning request. (1) In reviewing a request by an agency for zoning, rezoning, or variance, the governing body, zoning commission, and board of adjustment of the unit of local government whose regulations govern shall review the request in accordance with the provisions of Title 76, chapter 2.

(2) The following tests of public interest shall also be considered when reviewing a zoning request by an agency:

(a) the public benefit to be served by the intended use, including regional and statewide interests;

(b) the effect compliance with local land-use regulations would have on the applying agency in its effort to serve the public;

(c) the availability of alternative locations for the proposed development or use of land.

(3) The provisions of subsection (2) do not apply to review of zoning requests of an agency for land that has been acquired under a long-range development plan but that is not being used for its eventually intended public purpose.

-End-

INTRODUCED BILL
HB 594

STATUS SHEET

LOCAL GOVERNMENT COMMITTEE

47th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 575	An act to generally clarify the powers of county commissioners relating to planning and zoning and to create a citizen advisory committee to advise the county commissioners on proposed amendments to zoning regulations	1/30/81	Kitselman	Tues. 2/9	DO PASS AS AMENDED 2/9/81 (unan)	2/11
HB 581	An act to clarify the provisions of Chapter 165, laws of 1979, relating to special improvement district assessments and installments; providing for semiannual assessments	1/30/81	Donaldson	Tues. 2/9	DO PASS 2/10	2/10
HB 594	An act requiring land development and use by governmental agencies to conform to the local zoning regulations.	1/31	Kemmis	Tues. 2/10	AS AMENDED DO PASS	2/13
HB 622	To increase the permissive county road levy	2/3/81	Neuman	Tues. 2/10	DO PASS AS AMENDED	2/13
HB 624	To increase the fees charged by the county clerks for recording, filing, and copying services; removing provisions that are outdated	2/3/81	Williams	Tues. 2/10	AS AMENDED DO PASS	2/13
HB 643	An Act to remove the limitation on the number of deputies that may be hired by a county sheriff in any county of the state	2/4	Matsko	Tues. 2/10	DO PASS 2/10	2/11

Form CS-32
1-79

MINUTES OF THE MEETING OF THE COMMITTEE ON LOCAL GOVERNMENT
February 10, 1981

The meeting was called to order at 7:30 p.m. by Chairman Bertelsen. The secretary called the roll and found all members present except Representative Hurwitz who was excused and Rep. Pistoria who was absent.

CHAIRMAN BERTELSEN introduced Rep. Mel Williams who is chief sponsor of HOUSE BILL 624.

HOUSE BILL 624 Sponsor Mel Williams said this is an act to increase the fees charged by the County Clerks for recording, filing, and copying services; removing provisions that are outdated amending sections 7-4-2631 and 7-4-2632, and repealing section 7-4-2633. We have some witnesses here who will testify in behalf of this bill and I would first like to call on Mr. Merrill Klundt, who is the Clerk and Recorder of Yellowstone County.

PROPONENTS TO HOUSE BILL 624

MERRILL KLUNDT said he is the Vice Chairman of the Legislative Committee of Montana, Clerk & Recorders Association. He said that on behalf of the County Clerk and Recorders Association and himself, we would appreciate your support in passing this worthwhile legislation. (Mr. Klundt submitted his written statement in favor of this bill, which is attached to and made a part of these minutes.)

WILLIAM ROMINE represented the Montana Clerk and Recorders Association. He said he would not talk on the technical aspects of the bill. He said this group supports this legislation. Primarily what this bill intends to do is to attempt to have those who use the Clerk and Recorders office pay for those services. 1959 was the last time the fees were raised. Since that time the cost of paper, typewriters and everything else has gone out of sight. Because of inflation, we feel the fees should be increased to cover these additional costs. (Mr. Romine also submitted written testimony which is attached to and a copy of these minutes.)

LORRAINE MOLITOR, Madison County Clerk and Recorder, furnished a letter in support of HOUSE BILL 624, which is attached to and made a part of these minutes.

MIKE STEPHEN represented the Association of Counties. He said they support this bill. Many of us have a better idea of exactly what the County Clerks do in reviewing this, plus the increases of these fees are nominal and we support them.

HELEN KOVICH, Lewis and Clark County Clerk and Recorder, signed the witness sheet supporting HOUSE BILL 624.

THE CHAIRMAN said we'd now hear House BILL 594.

HOUSE BILL 594 sponsor, Rep. Dan Kemmis, said this bill grows out of a problem that has arisen in District 94, but which he thinks is festering in some other districts, too. It is a difficult problem and I don't know if there are any easy solutions. Our district includes the University of Montana and also the surrounding residential neighborhood. The University of Montana owns a number of houses within the residential neighborhood. Some of them have been converted to offices and there is no problem with that. In some of the blocks the University owns just scattered houses. That is where the problem has arisen. On one of those blocks which is zoned by the city of Missoula as a single family residential area, the University has proposed, and some people say threatened, to convert the use of that building to office space. So you'll have a situation where you'll have a whole row of single family residences and suddenly you have an office. The individuals who own the family houses feel that this is an infringement of their rights under the zoning law. They have asked the University whether it would submit itself to at least a public hearing through a zoning variance procedure, and the University has said it is not subject to zoning and will not do that. The people have been left with no recourse and nothing but the most informal means of protesting what the University intends to do.

The purpose of House Bill 594 is to make it clear that in such a situation the government agency is in fact subject to zoning, but at the same time want to make it clear that when a government agency attempts to change zoning as they are doing in this instance, the benefit of the doubt will be given to the government agency. That is, the agency may raise a number of factors which are referred to here as public interest factors, but they are all factors that weigh on the side of the government agency. In considering a rezoning request, the zoning commission would have to consider the public benefit to be served by the intended use, in this case, the use by the University of a residence as an office building.

The bill also provides no zoning regulation would have the effect of excluding a government agency from any particular neighborhood. If it had that effect, then it would not have any effect at all, and the zoning regulations would not apply.

PROPONENTS FOR HOUSE BILL 594

ANDREW HORNICK of Missoula represented himself. He said he lives in a block that is directly affected by the University. Mr. Hornick supports this bill. (He submitted written testimony which is attached to and made a part of these minutes.)

DAVID WILCOX stated he is Assistant to the Mayor of Missoula and is speaking on behalf of the city of Missoula. I was also notified by the County Commissioners this afternoon that they would like me to tell the committee that they also unanimously support HOUSE BILL 594. Tradition has to a large degree held government immune to local zoning. The idea of immunity is based on a philosophy that intruding government represents the interests of the greater number of people. For example, it is presumed that functions of the State benefit all citizens of the State, not just those living in the community where the facility is located. I think this is probably correct. State legislation provides that the health, safety and welfare of the citizens of the State should certainly not be ignored by government. More recently, courts across the country have addressed the issue out of recognition that government enterprise can, in fact, have a severely negative impact on adjacent property, particularly residential property. We prefer not to rely on the future compelling interest of government bodies to cooperate without any direction from the state legislative bodies. We certainly welcome governmental usage, but we prefer to have them under a program of proper regulation and in the spirit of mutual cooperation.

PROPONENTS

I'm RUDYARD GOODE and I live directly south of the main part of the university in Missoula. My wife and I have been among those most severely affected by what has been past and what we think are potentially harmful uses of some University property located in our block. We learn, indirectly, of planned non-residential uses which are not reasonable nor compatible with the existing neighborhood. We support this legislation and hope it will pass.

THOMAS L. FINCH, President of the University Area Homeowners Association, said they do not see this bill as just an issue aimed at the University. This bill is also aimed to further the concept of equal protection and treatment under the law, whether the applicant is only an individual, a corporation, or an agency of government. We would all be treated alike. In the past, agencies of the government claimed to be exempt from local government. If they are in opposition now, they are simply in effect asking to be allowed to operate outside of law. Zoning regulations by government agencies are unfair and inequitable treatment of the people who support those agencies, which then in turn do harm to the people's investment in their homes and to the peace and tranquility of their home life. House Bill 594 by its own language is not a foolish attempt to exlude necessary government institutions from any zoning districts. It will simply require that the orderly process of obtaining a variance or requesting a rezoning of an area will be followed. On behalf of our association, I ask your help that HOUSE BILL 594 be passed into law by giving it a DO PASS recommendation.

JOHN F. PATTERSON also represented the University Homeowners Association. I too speak in favor of this bill. Anything we can do to strengthen local zoning will have the effect which we want because it is important to keep up with the older areas. I would like to see this bill enacted.

OPPONENTS TO HOUSE BILL 594

WARD SHANAHAN of Helena said he is an attorney and his law firm represents the Northern Tier Pipeline Company. I am not here to oppose this bill but am merely appearing for the purpose of proposing an amendment. In the bill a pipeline company is granted the power of eminent domain in order to lay out its right-of-way across Montana. In the statute granting the power of eminent domain it is an agency charged with the public use to which it is granted. Therefore, under this bill it is an agency. Local zoning regulations are also county zoning regulations. The pipeline company does not have the power to run willy-nilly through Missoula or any other incorporated city in Montana. But it does have the power to go across any public road or street or lands outside the boundaries of any city or town. We propose to the sponsor an amendment to take care of rights-of-way easements and we believe that the following language would be acceptable. On page 1, line 17, after the word "agencies," add the following: "Except in the case of rights-of-way and easements," Thank you.

BEATE GALDA represented the Department of Highways. We are neither in opposition to nor for this bill. We would also like to support the amendment. There is no problem with local projects. We do apply for and receive local support in most urban projects. There are protections through the EIS statements, through public hearings for location and road designs and through the eminent domain proceedings. We feel that this additional veto power by local officials would not be necessary. The intent of the bill seems to be aimed at buildings, construction of buildings and other uses that are not highways. We support Mr. Shanahan's amendment.

ANDREW VanTEYLINGEN, and I'm the Facilities Planning Officer of the Montana University System. I'd like to read the University's position on this proposed legislation. (Mr. VanTeylingen submitted his written testimony which is made a part of these minutes.)

KEN HEIKES, said he is administrative vice president of Eastern Montana State College. There seems to be a lot of talk from Missoula but Billings also has the same problem. I've been at Eastern since 1966. In 1967, 1969 and 1971 the legislature appropriated money so that Eastern Montana College could acquire some land. The money was to be used to purchase additional property immediately surrounding the campus for educational purposes.

In 1972 we took the Board of Regents a proposal called the long-range building program and included a facilities acquisition schedule that indicated three areas surrounding the campus in which we should buy property. There are now 30 parcels. I have a question and I don't really understand what it means by the very last paragraph of the bill about land acquired under a long-range development plan. We were to acquire land under a long-range development plan if the plan that we started in 1972 qualifies.

CHAIRMAN BERTELSEN called for additional opponents. As there were none, he asked Rep. Kemmis to close.

REP. KEMMIS closed. First of all, it is a pleasure for me to concur in the amendment suggested by the Northern Tier Pipeline Company. I do think it is a workable amendment and takes care of the objections of the pipeline, and the Highway Department. I believe there is a problem which exists in Missoula, Billings and in Helena in areas around the capitol. It has been suggested that a bill like this would involve us in a conflict of sovereignties. I think in the final analysis there won't be any doubt about who is sovereign. The State has the power of eminent domain for these purposes. The power of eminent domain is in the background in all cases and I'd like you to keep that in mind. First of all, the people are the most sovereign of all and here we have some people who feel that they are sovereign on their land and yet they are told they cannot do certain things on it. At the same time a state agency moved into their block and with what appears to be an arrogant attitude tells them that they can do essentially what they please. That situation, I believe, should be resolved through a process of negotiation. That process of negotiation should include the state agency going to the zoning commission and asking for a change in the zoning in order to meet their requirements. With the provisions that we have written into this bill giving the benefit of the doubt to the state agency, then I think they have every possibility of getting that zoning variance. If that doesn't work, then the state agency does have the power of eminent domain and it can then in fact condemn the land for the purposes that it wants. That could be a final solution; it is there and this bill doesn't take it away. In Montana the exercise of power of eminent domain is not subject to zoning and it would not be changed by this law. I believe this law is a fair solution that leaves the ultimate power of sovereignty in the State but at the same time it subjects a state agency to having to at least make an effort to accommodate their plans to the interest of local residents.

QUESTIONS FROM COMMITTEE MEMBERS:

REP. HANNAH: Can you tell me what the logic of the thought is

that state agencies shouldn't have to comply with local zoning?

REP. KEMMIS: I suspect that the logic is that local governments are the creatures of the State and that the State is the ultimate master and therefore local government should be subject to the will of the State.

REP. SALES: We have the same problem with federal buildings. But the states are creatures of the federal government, and in the same sense the counties are creatures of the state.

REP. KEMMIS: That is correct. However, we are not in a position to impose local zoning regulations on the federal government.

REP. SALES: I wish you would explain the last paragraph.

REP. KEMMIS: It was added by the Legislative Council in an effort to draw a distinction between proprietary and non-proprietary uses of land. What it actually does is to say that if a state agency has acquired land having put forward an argument that it has a long-range plan, let's say that in the long run this is how it is going to be laid out, and then it does not follow that long-range plan but puts it to a different use and in fact then applies for a zoning change that would put it to a different use, then the benefit of the doubt criteria that are in subsection 2 would not apply since they aren't doing what they said they were going to do at the outset. That is the logic behind it.

REP. KESSLER for the gentleman from Missoula: Mr. Goode said he's written a number of letters to you or to somebody from the University making overtures to facilitate his problem or work it out and he stated you haven't responded to them.

MR. VanTEYLINGEN: I haven't seen the letters but tomorrow morning I'm going to look for them.

MR. GOODE said those letters were sent to every member of the Board of Regents, the Commission of Education and to the Governor.

REP. HANNAH: It bothers me to think that the state institutions do not bother to respond. Maybe they feel they can sandbag it until it gets to the legislature. I would also like to have some member from the University reply as to why they don't think they should subject themselves to local zoning?

MR. VanTEYLINGEN: First of all, it was the Attorney General's opinion that we asked for in 1975. He stated that state agencies are not subject to zoning regulations. There are specific reasons in our opinion why the various units of the University System should not be subject to zoning regulations. I'll take Missoula as an example. About four years ago Montana State University

established a school of nursing program on the campus of the University of Montana. All of our university units have not had as many new facilities built in the last few years as we desired. This is one of the reasons that Missoula has purchased as many houses as we have at the University of Montana and have housed programs in these residences other than single families. The School of Nursing occupies two houses. When you have the faculty split and inadequate space for the students to get together, it seemed logical to find a bigger place for them close to the campus. I spent considerable time in Missoula attempting to locate a structure close to the campus that would be big enough to house 15 nursing faculty and at one time from 30 to 40 students. I did locate two or three places which were older and big enough but with some remodeling and improvement they would have served the faculty and the students of the School of Nursing. I met with the people in the zoning office in Missoula and I also talked with the past president of the residents' association there and explained what we were trying to do. I was told very definitely that if we tried that we would find ourselves with problems and for that reason we backed off. The School of Nursing is still in two residences.

REP. VINGER: On line 11 where you see the word "agency," it spells out the meaning of the word. On line 17 it says the development and use of land held by an agency which would be our state land. Would that have to conform to local zoning?

REP. KEMMIS: I don't think you'd find any land that is subject to local zoning.

REP. HANNAH: Rep. Kemmis, if the state agencies were required to conform to zoning, what are the eminent domain possibilities? What kind of problems are we going to have under this kind of situation?

REP. KEMMIS: I think it is possible to exaggerate the problems. First, I think it is very important to keep in mind that in the case of Missoula, it would be the City of Missoula that would make the decisions about whether to grant variances for the university. It is important to recognize that in any situation like that that the city is overall a branch of the state agency. They want to have them there. You can see that all the time. The city likes to have the state agency there because of the revenue that it brings and all the rest of it. The possible problem of having a city choke off the growth of the university really doesn't exist. It is for that reason that I think that Eastern hasn't had any major problems. It won't have major problems; just minor problems.

REP. HANNAH: Mr. VanTeylingen, when you took over these systems for the university system and you put the nurses in there where

it requires remodeling, are government agencies free from all restrictions such as putting in conduit wiring, a certain number of bathrooms, etc.

MR. VanTEYLINGEN: Yes, but we have even tighter controls.

REP. HANNAH: Are they self-imposed?

MR. VanTEYLINGEN: No, they are imposed on us. We have two major uniform building codes. One is when we build or remodel something which is the uniform building code. That is administered by the State Department of Administration Code Division. Where we use an existing building, we are under the jurisdiction of the Department of Justice. The fire marshall enforces the fire code.

REP. DUSSAULT: REP. KEMMIS, what is the scope of the bill? I think that is a whole separate issue. My first question is relative to State lands or lands owned by state agencies. They would for all intents and purposes come under the scope of this bill. For example, those lands owned by Fish and Game.

REP. KEMMIS: Wherever there is a local zoning ordinance in effect. You have to realize that almost none of the open space in Montana is subject to local ordinances.

REP. DUSSAULT: Secondly, is the State of Montana considered an agency under this bill? Would the capitol complex be a state agency?

REP. KEMMIS: I believe the definition of agency as written here is broad enough to include the state government. It says, "or other entity of state or local government." I would feel safe in telling you that the State itself would not be included as an agency.

REP. DUSSAULT: The state has the right of eminent domain. But the University System does not have that right, does it?

REP. KEMMIS: As an agency of the State, I suspect that the University System does have the power of eminent domain.

REP. SALES: Is there any type of amendment that would make this palatable to the system, or do you see no hope in it?

ANSWER: I see no hope in it.

CHAIRMAN BERTELSEN asked for further questions. As there were no further questions, he closed the hearing on HOUSE BILL 594.

VISITORS' REGISTER

HOUSE LOCAL GOVERNMENT COMMITTEE

BILL HOUSE BILL 594 Date Tues., FEB. 10

SPONSOR Rep. Kemmis 7:30 pm

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOSE
A. A. van Teylingen	Bozeman, Mt.	Mont Univ. System		X
Ken Heikes	Billings	E.M.C.		X
David Wilcox	Missoula	City	✓	
JOHN F. PATTERSON JR	MISSOULA	UNIVERSITY HOME OWNERS	✓	
Thomas L. French	Missoula	UNIVERSITY AREA HOMEOWNERS ASSN	✓	
Rudyard Boyle	Missoula	Self	✓	
Andrew Dornaich	Missoula	self	✓	
JACK [illegible]	[illegible]	[illegible]		X
WARD SHANAHAN	ACCENT	NOR. TIER Pipeline		AMEND
[illegible]	[illegible]	Dept. of Highways	Neutral	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

NAME Andrew Hornick BILL No. 594

ADDRESS 629 E. Beckwith, Missoula DATE 2/10/81

WHOM DO YOU REPRESENT self

SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

There should be more recognition + compliance between the different levels of government. Each should recognize the jurisdictions of others. The gov't. organization closest to home is the one most concerned with local + private citizens. In my case this is the city of Missoula and local zoning.

We had no trouble with the univ. in my residential area as long as the pres. of the Univ. lived in the ~~area~~ block. As soon as a house suitable enough for the pres. of the U and his wife was procured for the area, the university supervisors started agitating to break up our pleasant residential area. We had been in that area for 25 years as of Feb. it the way it is.

FORM CS-34
1-81

NAME Rudyard B. Boorde HB BILL No. 594

ADDRESS 643 East Beckwith Missoula DATE 2-10-81

WHOM DO YOU REPRESENT Self

SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

My wife and I have, in effect, been harassed by the ~~~~ uncertainty about the use of University of Montana owned residences in our block. We learn, indirectly, of planned non-residential uses which are not reasonable nor compatible with existing neighborhood.

FORM CS-34
1-81

NAME Thomas L. Finch BILL No. 594

ADDRESS 415 E Beckwith, Missoula DATE 2-10-81

WHOM DO YOU REPRESENT University Area Homeowners Association

SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: Speaking in support of the bill to promote equal protection under the law in zoning matters whether the applicant is an individual, a corporation, or an agency of state or local government.

FORM CS-34
1-81

NAME JOHN F. PATTERSON JR BILL No. S94

ADDRESS 304 S. 5TH E MISSOULA DATE 2/10/81

WHOM DO YOU REPRESENT MYSELF AND UNIVERSITY HOMEOWNER

SUPPORT ✓ OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

FORM CS-34
1-81

NAME A. A. van Tuinen BILL No. 594

ADDRESS Bozeman, MT DATE Feb 10, 1981

WHOM DO YOU REPRESENT Montana University System

SUPPORT _____ OPPOSE X AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

See attached

FORM CS-34
1-81

THE MONTANA UNIVERSITY SYSTEM
33 SOUTH LAST CHANCE GULCH
HELENA, MONTANA 59620
(406) 449-3024

COMMISSIONER OF HIGHER EDUCATION

February 10, 1981

To: Members of Local Government Committee

From: Andrew VanTeylingen, Facilities Planning Officer
Montana University System

Re: Testimony On House Bill No. 594

Section 3, subdivision (2)(a) would effectively give local government agencies, including zoning commissions and boards of adjustment, veto power over programs and facilities considered and authorized by this Legislature. It would allow legislatively authorized programs to be held hostage to local interests and politics.

The bill creates a conflict of sovereignties. It is also possible that it contributes an unconstitutional delegation of legislative powers. This Legislature, under our constitutional form of government is the only competent body to determine state interests. This bill at Section 3(2)(a)-(b) delegates to subordinate local agencies the power to determine state-wide interests and needs without specific guidelines as to how that power should be exercised. This is an infringement on the power which the people delegated to its elected legislative representatives.

The power to control the location of public services is the power to control their effectiveness and existence.

The use of the word "considered" in Section 3(2) would allow the local governmental body to avoid application of the statements presented in Section 3(2)(a)-(c). The dictionary definition of "consider" would not require the local governmental entity to actually apply those statements in reaching its decision as long as it reflected on or thought about them.

In short - Decisions relative to use of land and facilities to serve the programs of the University System would be subject to local control.

AV:blo

Missoula, Montana 59801
April 11, 1980

MB594

Mr. Ted James, Chairman
Board of Regents
Montana University System
2210 Beech Drive
Great Falls, Montana 59401

Dear Mr. James:

Recently it has been brought to our attention that the University of Montana plans to convert the house at 667 East Beckwith Avenue (formerly the University of Montana president's residence) to offices for the University Development Fund, and incidentally, the University Foundation. Of the eight residences in the 600 block of East Beckwith Avenue the University owns the house mentioned above plus the houses at 619 and 655 East Beckwith Avenue. All three of these residences are presently being rented and used as single family dwellings in accordance with local zoning laws.

We would like to protest this proposed change on the grounds that it not only violates local zoning laws but also diminishes the value of our properties, changes the essential character of the neighborhood, and infringes on our civil and property rights.

Until the University of Montana is prepared to purchase all the privately owned property in this block, we would like to urge the Regents and the Commissioner not to approve routinely this violation of Missoula City zoning laws. We consider the intent of the University tantamount to "block busting".

We find the University's attempt to locate the University Development Fund and the University Foundation in our residential block particularly offensive because President Bowers assured us last August 9, 1979 that he would recommend to the University Campus Development Committee that the Foundation not be located in this residence. Furthermore, Allan Vannini, the Director of the Foundation in a separate meeting July 25, 1979 said that the University of Montana Foundation would never locate in the block if the residents of the block objected. We feel, therefore, that the University officials have violated an oral contract and their moral commitment to us. Notes taken by Walter King, 656 Evans Avenue, Patricia Dunkum, 601 East Beckwith Avenue, and Rudyard Goode, 643 East Beckwith Avenue, document these statements.

What is worse, we on this block have had to fight off University attempts to misuse this residential property for at least the last eight years (specific dates are available if they are necessary). For example:

1. After tearing down a residence on the southeast corner of Maurice and Beckwith, the University tried to turn this lot into a parking lot. We convinced them not to proceed.
2. The University tried to turn the Paul Gillespie house at 655 East Beckwith into offices. We convinced them not to proceed.
3. After tearing down a residence on Arthur Avenue behind the Edmund and Mary Freeman house at 601 East Beckwith, the University tried to turn this very small lot into a parking lot. We convinced them not to proceed.
4. The University proposed to demolish the house at 619 East Beckwith in order to make a parking lot. We convinced them not to proceed.
5. The University planned (in August 1978) to turn the house at 667 East Beckwith into a home for disturbed children. We convinced them not to proceed.
6. The University proposed to move the University of Montana Foundation into 667 East Beckwith Avenue last August, 1979. We thought we had convinced the University not to proceed (see enclosed correspondence between Mr. Hanson and Mr. Bowers and Mr. Hanson and Mr. Vannini).

Time and time again, the University has tried to violate the residential nature and character of this block. Time and time again, we have had to band together to convince them not to do it. Quite frankly, we are tired of having to convince University officials that their plans to use this property for non-residential purposes are unnecessary or ill-conceived and in violation of local zoning ordinances only to have these same officials try six months or a year later to do something of the same ilk.

It is for these reasons that we asked President Bowers to sell the property on the South side of Beckwith last August. As you can tell from Mr. Hanson's letter to President Bowers extablishing the conclusions of that meeting and from President Bowers' reply, President Bowers agreed last August to do just that. We are amazed that not only has President Bowers gone back on his word to us, but Mr. Vannini, who specifically told us that the University Foundation would not move into the house at 667 East Beckwith Avenue against our wishes, has now also gone back on his word.

If and when this matter is brought to the attention of the Board of Regents, we urgently request that we be heard in open session.

Sincerely yours,

Aubrey Dunkum and Patricia Dunkum
601 East Beckwith Avenue

Aubrey K. Dunkum Patricia F. Dunkum

Jean Wordal
609 East Beckwith Avenue

Jean Wordal

University owned
619 East Beckwith Avenue

Andrew Hornick and Margaret Hornick
629 East Beckwith Avenue

Andrew Hornick Margaret M. Hornick

Robert Hausmann and Jocelyn Hausmann
633 East Beckwith Avenue

Rudyard Goode and Gera Goode
643 East Beckwith Avenue

Rudyard Goode Gera Goode

University owned
655 East Beckwith Avenue

University owned
667 East Beckwith Avenue

Ray Beasley and Jane Beasley
660 Evans Avenue

Ray Beasley Jane Beasley

Walter King and Jean King
656 Evans Avenue

Walter N. King Jean King

Ronald Holder and Lynne Holder
640 Evans Avenue

Ronald L. Holder Lynne Holder

Lewis Thoman and Mary Thoman
636 Evans Avenue

Lewis J. Thoman Mary Thoman

Mary Collins
630 Evans Avenue

Mary M. Collins

John Badgley and Pat Badgley
620 Evans Avenue

Patricia Badgley - John Badgley

Philip Schuster and Cynthia Schuster
614 Evans Avenue

Philip H. Schuster - Cynthia Schuster

Keith Angwin and Dorothy Angwin
600 Evans Avenue

Keith Angwin - Dorothy M. Angwin

Copies to: Gov. Thomas L. Judge, the Board of Regents, the Commissioner of Higher Education.

Enclosures

University of Montana
Missoula, Montana 59812
(406) 243-2311

September 4, 1979

E. Arnold Hanson, President
University Area Homeowners Association
515 E. Kent Avenue
Missoula, Montana 59801

Dear Mr. Hanson:

Thank you for your kind letter of August 28, 1979.

I was pleased to meet with the University's neighbors several weeks ago. It was for me a beneficial meeting. I apologize for not having been able to stay longer.

Sincerely,

Richard C. Bowers
President

RCB/kc

UNIVERSITY AREA HOMEOWNERS ASSOCIATION

515 E. Kent Avenue
Missoula, Montana 59801
August 23, 1979

Dr. Richard C. Bowers, President
University of Montana
Missoula, Montana 59801

Dear President Bowers:

On behalf of the University Area Homeowners Association and the many members who live in the immediate vicinity of the University properties on E. Beckwith Avenue, I want to express our sincere thanks for your meeting with us earlier this month. Our brief discussion, I'm sure, was mutually beneficial and we were all relieved to learn that you plan to recommend the University sell the residence properties on E. Beckwith in favor of completing planned acquisitions across the street and on the north side of the campus.

Our Board of Directors met last evening and voted to extend our thanks to you for not converting the old president's house at 667 E. Beckwith into office space for the University of Montana Foundation and especially for assuring us you plan to rent the three houses for residential purposes only until such time as they can be sold for single family occupancy.

If you believe it appropriate we could arrange to have one or two members of our UAHA Board meet with you and the Campus Development Committee when you discuss plans for the E. Beckwith properties.

Thank you again, very much.

Sincerely,

E. ARNOLD HANSON

E. Arnold Hanson, President

cc: Campus Development Committee
c/o Dr. Donald Habbe

cc: D. Angwin, V.Pres.
H. Doty, Secy.
T. Finch, Zoning Comm.

UNIVERSITY OF MONTANA FOUNDATION

MISSOULA, MONTANA 59812 TELEPHONE 406-243-2593

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UM ALUMNI ASSOCIATION
Conrad, Montana
BETTY DELAND, Past President
UM ALUMNI ASSOCIATION
Helena, Montana

July 27, 1979

Mr. E. Arnold Hanson
515 East Kent
Missoula, Montana 59801

Dear Mr. Hanson:

Thank you for the opportunity to meet with the University Homeowner's Association.

As I said at the meeting, the Foundation wants to take no action that will upset the Association. Therefore, I have informed Dr. Bowers that we are withdrawing our request for use of the former presidential residence on Beckwith.

Thank you.

Sincerely,

Allan M. Vannini
Executive Director

AMV:ar

State of Montana
Office of The Governor
Helena, 59601

THOMAS L JUDGE
GOVERNOR

October 11, 1978

Mrs. Rudyard Goode
643 E. Beckwith
Missoula, Montana

Dear Mrs. Goode:

My staff has passed on to me the concerns you have expressed about your neighborhood in Missoula and in particular your concern about the University holdings of property in residential areas.

As I understand it, the particular home, owned by the University, which you had heard was under consideration for use by emotionally disturbed youths is no longer being considered for that use. For the moment, that should allay your concern.

However, you raise a good point regarding the need to review all University properties, whether or not they are still needed, whether or not they fit into expansion plans of each campus, whether or not the expansion plans are in fact still valid. As you know, the Board of Regents is the legal entity responsible for these matters. However, even though not under my authority, I have made the request of the Board of Regents that they do undertake such a review. It may be that you will want to follow-up with specific information or comment to the Board, c/o Ted James, Chairman.

Thank you for bringing these matters to my attention.

Best personal regards.

Sincerely,

Thomas L. Judge

THOMAS L. JUDGE
Governor

MINUTES OF THE MEETING OF THE LOCAL GOVERNMENT COMMITTEE
February 12, 1981

The Local Government Committee met Thursday, February 12, 1981 at 12:30 p.m. in Room 103 of the Capitol. CHAIRMAN BERTELSEN called the meeting to order and the secretary took the roll. All committee members were present except REP. PAUL PISTORIA, who was absent. Staff Researcher Lee Heiman also attended the meeting.

HOUSE BILL 562

REP. BOB THOFT, sponsor of HB 562, said this is an act to revise and simplify the process of adding contiguous land in an unincorporated area to a sewer district. What the bill does is make it possible to take in a contiguous landowner by petition without having an election. Under the present law an election is required and this could cost from $900 to $1,000. I'll use Victor as an example. This is an unincorporated town, but they do have a sewer district there. They are running at about 30% capacity. If this bill is passed, they can take in contiguous land owners by petition without an election. I think there are about only 12 of these unincorporated towns in the state, but I think there will be many more in the future because of the need for sewer districts and the fact that incorporating is not all that popular. If you have any questions, I'll be glad to try and answer them. Thornton Mann, a representative in the 1974 session, is here to testify as a proponent.

PROPONENTS FOR HOUSE BILL 562

THORNTON MANN of Victor said he'd like to support HB 562 and urged that the committee recommend a DO PASS.

OPPONENTS OF HOUSE BILL 562 - As there were none, CHAIRMAN BERTELSEN asked if REP. THOFT would like to close.

REP. THOFT said he closes. Before the bill was drafted he checked it out with REP. GOULD and figured he was over the hump as he felt it was a good bill.

QUESTIONS FROM COMMITTEE MEMBERS

REP. HANNAH asked REP. THOFT the following question. On line 19, page 2 this must be done by a petition from the people.

REP. THOFT replied that is correct.

REP. HANNAH asked if there are any provisions in this bill that will cause people to sign away their rights to protesting annexation in the future?

EXECUTIVE SESSION

HOUSE BILL 393 - sponsored by Rep. Orren Vinger

REP. VINGER said a few days ago he asked to have HB 393 tabled. At this time I'd like to have permission from the Committee to take that off the table and have it posted for hearing on February 19. At the present time the county commissioners have to publish a detailed list of that month's proceedings in the newspaper. Under this bill they'd only have to print in the paper the expenditure totals for each budget categoty. There isn't much sense in making them itemize every little expenditure as they do now.

REP. VINGER moved that House Bill 393 be taken off the table.

QUESTION: All those in favor say "aye." The motion carried unanimously.

HOUSE BILL 594 - Chairman Bertelsen said we passed HB 594 last night, but I have a note on it to hold it until tonight.

QUESTION: All in favor of reconsidering HB 594 say "aye." All voted "aye" and the bill was reopened for further consideration.

REP. DUSSAULT requested that this bill be reconsidered for the purpose of adding an amendment. She said one of her concerns with the bill is that she thinks implications to this bill might be unclear. One thing I am particularly concerned about is the current, very clear and specific exception in State law that exempts group homes for the handicapped from the provisions of any building requirements. That has been tested in the Montana Supreme Court and has been upheld. I would like to amend this bill so it is very clear that this exception applies within the statute also.

REP. DUSSAULT said she is ready with the amendment to HB 594, as follows:

1. Page 1, line 17.
Following: "agencies."
Strike: "The"
Insert: "Except as provided in 76-2-314 and for rights of way and easements, the"

This is an amendment to the bill as it now stands. It is a reference to the code that makes an exception from all zoning requirements for group homes.

QUESTION ON AMENDMENT:

All in favor of the amendment signify by saying "aye." All present said "aye." Motion carried unanimously.

REP. DUSSAULT then moved that HOUSE BILL 594 DO PASS AS AMENDED.

QUESTION:

A roll call vote resulted in the following: 15 of 19 committee members were present. 10 voted "aye"; 5 voted "no" as follows: Reps. Andreason, Gould, Neuman, Sales and Switzer. 3 committee members were absent, namely Reps. Azzara, Hurwitz and Pistoria. One abstained, being Rep. Kitselman. The motion carried and HB 594 received a DO PASS AS AMENDED recommendation.

HOUSE BILL 447 - sponsored by Rep. David O'Hara

CHAIRMAN BERTELSEN said this is an act providing additional alternatives for the assessment of costs for improvement districts.

REP. ANDREASON moved that HOUSE BILL 447 DO PASS.

REP. ANDREASON moved to amend House Bill 447 as follows:

Page 1, line 13.
Following: "one"
Insert: "or a combination"

QUESTION ON AMENDMENT: All in favor signify by "aye." All were in favor except Reps. Neuman and McBride. Motion carried and the above amendment was adopted.

REP. ANDREASON said he has another amendment, as follows:

Page 2, line 1.
Following: "as the"
Strike: "criteria"
Insert: "criterion"

REP. ANDREASON moved the amendment.

QUESTION: All in favor of the amendment, say "aye." Motion carried by unanimous vote.

REP. SWITZER moved that HB 447 DO PASS AS AMENDED.

QUESTION ON HOUSE BILL 447 - All in favor signify by "aye." All present voted "aye" with the exception of Reps. Neuman and McBride.

47TH LEGISLATIVE SESSION

COMMITTEE ON LOCAL GOVERNMENT

HOUSE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO ~~NOT~~ PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
473	03/02/81	03/17/81	03/17/81				03/17/81		
479	02/12/81	03/07/81	03/17/81					03/17/81	
498	02/20/81	03/12/81	03/17/81					03/17/81	
507	02/18/81	03/12/81	03/24/81					03/24/81	
555	03/03/81	03/24/81	03/24/81				03/24/81		
558	03/03/81	03/18/81	03/26/81					03/26/81	
562	02/21/81	03/12/81	03/17/81					03/17/81	
575	02/18/81	03/14/81	03/26/81						03/26/81
594	03/03/81	03/12/81	03/26/81						03/26/81
624	03/03/81	03/17/81	03/24/81					03/24/81	
643	02/18/81	03/14/81	03/17/81				03/17/81		
661	02/19/81	03/14/81	03/17/81				03/17/81		
693	03/03/81	03/12/81	03/17/81				03/17/81		
704	03/03/81	03/12/81	03/17/81					03/17/81	
712	03/03/81	03/17/81	03/17/81				03/17/81		
715	03/03/81	03/19/81	03/24/81						03/24/81

(Use Separate Sheet for Senate, House Bills, and Resolutions)

HOUSE BILL NO. 594

INTRODUCED BY KEMMIS, NORMAN

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING LAND DEVELOPMENT AND USE BY GOVERNMENTAL AGENCIES TO CONFORM TO LOCAL ZONING REGULATIONS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definitions. As used in [this act], the following definitions apply:

(1) "Agency" means a board, bureau, commission, department, an authority, or other entity of state or local government.

(2) "Local zoning regulations" means zoning regulations adopted pursuant to Title 76, chapter 2.

Section 2. Local zoning regulations to apply to agencies. The EXCEPT AS PROVIDED IN 76-2-314 AND FOR RIGHTS-OF-WAY AND EASEMENTS, THE development and use of land held by an agency shall comply with local zoning regulations if:

(1) zoning has been adopted pursuant to Title 76, chapter 2;

(2) zoning has been adopted in compliance with a master plan adopted as provided in Title 76, chapter 1, part 6; and

(3) the application of such zoning does not have the effect of excluding any state or local government institution from the jurisdictional area for which the local zoning regulations have been adopted.

Section 3. Public interest to be considered in review of agency zoning request. (1) In reviewing a request by an agency for zoning, rezoning, or variance, the governing body, zoning commission, and board of adjustment of the unit of local government whose regulations govern shall review the request in accordance with the provisions of Title 76, chapter 2.

(2) The following tests of public interest shall also be considered when reviewing a zoning request by an agency:

(a) the public benefit to be served by the intended use, including regional and statewide interests;

(b) the effect compliance with local land-use regulations would have on the applying agency in its effort to serve the public;

(c) the availability of alternative locations for the proposed development or use of land.

(3) The provisions of subsection (2) do not apply to review of zoning requests of an agency for land that has been acquired under a long-range development plan but that is not being used for its eventually intended public purpose.

-End-

THIRD READING

MINUTES OF THE MEETING
SENATE LOCAL GOVERNMENT COMMITTEE
MARCH 12, 1981

The meeting of the Local Government Committee was called to order by Vice-Chairman O'Hara in Senator McCallum's absence. The meeting was on the above date at 12:30 p.m. in Room 405.

ROLL CALL: Senator McCallum was excused due to another meeting, all other members were present.

CONSIDERATION OF HOUSE BILL NO. 498:

AN ACT TO INCREASE THE MINIMUM CONTRACT AMOUNT ABOVE WHICH MUNICIPAL CONTRACTS MUST BE ADVERTISED AND LET FOR BID AND MAY BE PAID IN INSTALLMENTS.

Representative Oberg, District No. 8, said this is a housekeeping bill. It takes into account the effects of inflation. City government has a difficult time when making contracts to purchase equipment. It is an impossible situation. The city of Havre had found a used pickup which was a very good deal but according to statute the bids had to be put out and they lost the vehicle. This proposal is workable and assures competitive bidding will remain when it is required. The House exempted construction in the bill, he is not happy with that. It does not take much construction to exceed $4,000.

Dan Mizner, League of Cities and Towns, said the problem lies with inflation rates. He wants to reinstate, on line 18, $10,000 in place of $4,000. On page 2, line 17, the section number is wrong, it should be 7-5-4302(1). It is unfair to cities and towns to be limited to $4,000. Contractors won't come in to bid for less than $10,000. This bill gives the cities the same consideration as counties.

Larry Huss, Montana Contractors' Association, said the League of Cities and Towns recommended the language inserted by the House be changed back to the original language. The reason it was inserted was because of the objection by contractors. They do not want the state to compete with them. They would like the language left exactly as it is.

There were no opponents appearing before the committee.

Representative Oberg, in closing, said he would like to go back to the original language. We need local control, we have to give them the authority.

Senator O'Hara then called for questions from the committee.

Senator Ochsner asked Mr. Mizner if he wanted the $4,000 on line 19 to be changed to $10,000.

Mr. Mizner said yes and strike the language after that.

Senator O'Hara asked if "construction" on line 16 would have to be reinstated also.

Mr. Mizner answered yes. They want the language that was on the white copy of the bill.

Senator Van Valkenburg asked Mr. Huss why he did not want the construction contracts raised, they have had the existing limit since 1971.

Mr. Huss said that would put them in competition with the government and they don't want that.

Mr. Mizner said the smaller cities and towns that have no construction companies have to call on companies from larger cities to bid on their contracts. The companies will not bid on contracts in these communities for $4,000.

CONSIDERATION OF HOUSE BILL NO. 594:

AN ACT REQUIRING LAND DEVELOPMENT AND USE BY GOVERNMENTAL AGENCIES TO CONFORM TO LOCAL ZONING REGULATIONS.

Representative Kemmis, District No. 94, said this bill arises out of a problem that exists in a number of communities where there is residential zoning in the midst of state- or other government entity-owned property which they want to put to other than residential use. The problem is when the owner chooses to go ahead and make changes without going through the proper zoning procedures. There is no requirement that they abide by zoning procedures. In Missoula the University of Montana owns property in residential neighborhoods and has proposed to change the use of that property from residential to office buildings. People in the neighborhood ask that they go through the zoning process so the public will have input in the matter. This bill clarifies the situation. He submitted to the committee a letter from a Billings resident. (See attached Exhibit A.)

Senator Norman, co-sponsor of the bill, said on page 2 there are some safety features. On line 1, page 2, the local authority cannot zone out state land, it would have to be considered. On line 12 it provides that in zoning, the authority would have to consider the public benefit to be served statewide. Nothing in this bill prevents the state from acquiring land.

With these safety features, the state's interest can be served and the state will have to pay some heed to the desire of local residents.

Mae Nan Ellingson, city of Missoula, said they are interested in assisting and protecting the residents of the city. So far they have been unable to protect residents to help ward off intrusion in their neighborhoods that they have felt was harmful or not in their best interests. Governmental institutions are not required to obey other governmental institutions' zoning. The purpose of the bill is to allow local government institutions to protect planning and zoning that has gone on in the community. The bill tries to give an advantageous way to meet the needs the interfering governmental agencies might have. The burden of proof as to public benefit is given to them. The nature of the zoning process in local government is decided by groups of appointed or elected officials. A zoning commission will hear and make recommendations on requests for zoning. It then goes to the city council. A person can appeal to the state or district court. This system gives government the flexibility they need.

Rudyard Goode, Missoula, lives south of the University of Montana. There were eight residences in the neighborhood when he moved to Missoula twelve years ago. They were being used as single-family residences. Over the years, the University of Montana has acquired additional houses in the neighborhood. The single-family residential zone has been changed once and may be changed again. There have been two occasions when nonresidential purposes have been proposed. He does not feel the university should be able to change the neighborhood.

Andrew Hornick, Missoula, lives in the same block. He is concerned with residential zoning.

Aubrey Dunkum, Missoula, also lives in the same neighborhood. They want to preserve the residential nature of the neighborhood.

Tom Finch, University Area Homeowners' Association, said the bill is not drawn narrowly nor is it a punitive attempt toward the university. Homes and neighborhoods are an environmental situation where we spend a great deal of time. When agencies introduce a facility that is contrary to the character and quality of the neighborhood, that environmental situation has been damaged. This action creates friction between people and agencies of government.

Senator O'Hara then called for opponents of the bill.

Jack Noble, deputy commissioner for Management and Fiscal Affairs of the Montana University System, spoke in opposition of the bill. (See attached Exhibit B.)

Phil Hauck, Architecture and Engineering Division of the Department of Administration, said they handle all building construction in the state of Montana. They oppose this bill because it is a very bad precedent for the state. Proponents say this bill would be in the best interest of the people but it is not in the best interest of the state. This gives zoning boards control over what he does. They can set conditions on any approvals that might be necessary. They could delay construction or stop it. They could charge additional fees for hookup of waterlines, etc. This bill is too extreme. It gives too much power. The conflicts have to be resolved and one or the other will have ultimate authority. It should be the legislature.

Representative Kemmis said, in closing, the debate gets down to a superior government doctrine which could be characterized as big brotherism. Action taken on anyone's neighborhood, regardless of the effect, is not right. If we believe in giving people control of what happens to them, then this bill is a step in the right direction.

There were no questions from the committee.

CONSIDERATION OF HOUSE BILL NO. 507:

AN ACT TO ALLOW THE REMAINING TRANSPORTATION BOARD MEMBERS TO FILL VACANCIES ON THE TRANSPORTATION BOARD.

Representative Azzara, District No. 96, said this bill allows vacancies on transportation district boards to be filled by board members. If a vacancy occurs, this allows the remaining members to fill the vacancy. The same provisions apply for advertising and giving public notice. This bill allows appointment to be made two weeks after appearance of notice.

Dick Howell, Transit Bureau of the Department of Community Affairs, was also speaking on behalf of the city of Great Falls. This bill allows involvement from the transit board.

There were no opponents of the bill appearing before the committee.

Senator O'Hara then called for questions from the committee.

Senator Thomas asked what the reason for the bill is, why couldn't county commissioners appoint the members.

Representative Azzara said there is no serious problem with that, it is just a procedural encumbrance to fill the vacancy that way. The vacancy can be filled more quickly this way and those making the appointment would have a direct knowledge of

Exhibit A

March 10, 1981

Representative Dan Kemmis
House of Representatives
State Capitol Building
Helena, Montana 59601

Dear Mr. Kemmis: Re: HB 594

I was happy to learn that efforts are being made to require State Colleges and Universities to abide by area zoning laws when constructing or expanding their facilities. We have experience in our neighborhood when Eastern Montana College was adding a Physical Plant building on property zoned RESIDENTIAL. The zoning law was completely disregarded. The building belongs in a railroad yard.

If the College had been required to stay within the zone or had hearings in connection with a zone change, we could have worked with the EMC officials to the benefit of all.

Sincerely,

C R Beitman

C R. Beitman (Clancy)
Enclosures

Letter to the Editor
Letter to the City Manager

Gazette

8-24-80

Eyesore

EMC has done it again to the tapxayers. The physical plant built on Rimrock Road looks like a junkyard that needs to be filled. A little landscaping would help a lot, a tree here and there perhaps, tall enough to cover that mess that looms up in front of taxed residents. We understand the botany class will plant some native grass. Without water or care and with weeds that tall, it will take eight life times to hide that stall.

You build a house in all good faith, pay your bills on time, vote for taxes to improve your schools, and the money is used to deface. The building is an insult to the existing campus and certainly adds nothing to the design of those who live just north of that junk who take pride in their homes and their town.

Property owners are well aware that taxes are rising, yet we vote for levies to help our schools. This is what you get.

Bette C. Beitman
307 N. Rim Road

November 13, 1980

Mr. Harrison G. Fagg
Harrison G. Fagg and Associates
222 North 32nd Street
Billings, MT 59101

Subject: Eastern Montana College's Environmental Impact on the residential area along North Rim Road

Dear Harrison:

Congratulations on your election to the Legislature.

We, the residents of North Rim Road, are still disturbed and angered over the development of the property south of our street. Reference is made to the Physical Plant Building that looks more like a Highway Truck Stop with all the surrounding junk; i. e. gas pumps, oil drums, trucks, cars and debris.

We have discussed the problem with you and President Van DeWetering of Eastern Montana College. Dr. Van DeWetering has been courteous and understanding. He admits the building is an ugly blight in our neighborhood. He also admits that the city would not allow a taxpayer's weeds to grow to the extent EMC's do. But, Eastern has no money to get rid of the weeds, or to improve the looks of the building and the area around it.

Last year Eastern had money and erected the concrete slab structure without obtaining a zone change from residential to commercial. They disregarded all city zoning laws and did not consider the impact on the neighborhood. Why wasn't the structure completed aesthetically similar to other buildings on the campus? Why wasn't it erected in a less conspicious area?

As you will recall the north side of the building faces North Rim Road with a huge ditch parallel to and separating the building from the street. This is unsightly and is considered hazardous to the otherwise residential area. It detracts and depreciates our property. It must also be noted that the building has been designed so that a second story can be added. We object strenuously.

We recommend that the area around this building be lanscaped so that the ugly building will be hidden from view as much as possible. As a suggestion, the slope along the North side of the Physical Plant should be stabilized with sandstone with wells spaced to receive conifers of the large type such as spruce, pine, fir and other varieties. A drip irrigation system or some other satisfactory method of watering will be needed. The South side as well as the East side will also require proper treatment.

In accordance with our earlier discussions we resepctfully ask that steps be taken to have the state legislature appropriate funds to adequately complete and landscape the area that is depressing to all of the people in the area. Eastern should have a campus which will be of pride to all.

The residents of this area have been damaged. Article II, Section 18 of the Montana State Constitution gives us the right to sue. We would rather settle this in an amicable way.

Sincerely,

Clarence R Beitman

Clarence R. Beitman for
All residents on North Rim Road

CC John E Van de Wetering, Pres EMC Billings 59101
Senator Thomas Keating 3302 Fourth Ave N Billings
Senator Mark Etchart, Box 429, Glasgow Mt
Royal Johnson City Councilman, Midland Natl Bk Billings
Al Thelan, City Manager, Billings
George S Freeman Planning Director P O Box 1178 Billings
Kenneth W Heikes, EMC Environmental Impact Co EMC
Residents North Rim Road

C. R. Beitman
307 North Rim Road
Billings, Montana 59101

Mr. Al Thelan, City Manager
City Hall
Billings, Montana 59101

Dear Sir:

We, the residents of North Rim Road, are disturbed over the development of the propety south of our street.

This neighborhood was here many years before Eastern Montana College purchased the area from the Heffners. When they bought the property we were elated. We thought they would improve the area - making the parking lot like the one south of the campus and develop the rest of the land like the main campus. We didn't complain when they didn't do this, thinking they would in time. They are doing the opposite.

We, who are TAXPAYERS, would like an answer to the following questions:

1. Is there a double standard to the zoning laws of the city - one for the taxpayers and another for E M C?

2. If this is not so, why can E M C do the following:

   a. Get a permit to build an extremely ugly, commercial type cement warehouse in a zoned residential area, and surround it with old trucks, cars, oil drums, gas pumps, and debris?

   b. Park old abandoned, wrecked cars on a lot in the same area, ...zoned residentail?

   c. Let weeds grow tall all over the place - a breeding place for grasshoppers - and, now a fire hazard.

In the Montana State Constitution, Article II, Section 18, gives us, the taxpayers, certain rights. This building has caused no end of anxiety, grief, disappointment, and concern.

Isn't it your responsibility, as City Manager, to see that the zoning board enforces its laws? This is definitely a "blighted" area within our city.

Please reply,

Sincerely

cc: Mr. K. D. Peterson, City Attorney
250 The Grand
27th St & 1st Ave
Billings, Mt. 59101

Dr. John Van de Wetering, President
Eastern Montana College

July 30, 1980

Dr. John VanDeWetering, President
Eastern Montana College
Billings, Montana 59101

Dear John:

This letter is to let you know that we who live on North Rim Road are disappointed in the design, construction and maintenance of the Physical Plant Building. We can only see depreciation of our property because of what the college has seen fit to do.

No doubt the building fulfills the present needs of the campus and your administration insofar as facilities and accessibility are concerned. I am sure no one can quarrel with that. However, the building does not fit aesthetically with other structures on the campus. The others are brick-faced whereas this one is of pre-stressed concrete industrial type which might fit well in a railroad siding location. The north side faces or parellels North Rim Road and has a 10-foot open trench between the building and the road. Vegetation is primarily weeds and dead grass presenting a fire hazard. You have told us that you were going to landscape the area but nothing of consequence has happened to date.

The front of the building fails to move us to ecstasy. It is visible from Rimrock road. The vehicles, oil drums, gas pumps and junkers seen from this vantage point certainly add nothing to an otherwise attractive campus.

Try as we may we can find nothing desireable to the east end of the building either. The pile of dirt put there is covered with weeds which is also a fire hazard. The exposed power transformer gives the appearance of an industrial site. All of the equipment and automotive vehicles should be housed behing a screened-off area as at the University of Montana at Missoula.

We are aware that Eastern did not get a zone change from residential and that you did obtain a construction permit from the city for a commercial building. Then you proceeded to construct the Physical Plant Building with complete defiance to the residents of the area and the people of Billings.

It is not our responsibility to oversee development of Eastern College. ~~Th~~ That is your job. How can this deplorable situation be corrected?

Please reply.

Sincerely

S C R Beitman

C. R. Beitman
307 North Rim Road.
Billings, Mt. 59101

cc: Harrison Fagg, State Representative, Granite Tower, 59101
City Manager, Billings, City Hall, 59101
Mr. John Richardson, Com of Higher Ed., 33 S Last Chance Gulch, Helena, 5960
People on North Rim Road, Billings 59101

EXHIBIT B

THE MONTANA UNIVERSITY SYSTEM

33 SOUTH LAST CHANCE GULCH
HELENA, MONTANA 59620
(406) 449-3024

COMMISSIONER OF HIGHER EDUCATION

TO: Senate Local Government Committee

FROM: Jack Noble
Deputy Commissioner for
Management and Fiscal Affairs

DATE: March 11, 1981

SUBJECT: H. B. 594

On behalf of the Regents, Commissioner of Higher Education, and the six campus presidents, I would like to express our opposition to H. B. 594.

We recognize that the actions of state agencies in fulfilling their public mission may, from time to time, create hardship for a few citizens who happen to be impacted by the decisions of a state agency. It appears that the reason for the introduction of H. B. 594 is to solve a particular problem for Missoula residents who live on the south side of the U of M campus.

Their concerns are undoubtedly real and no one, including the Regents or the Commissioner, derives personal gratification from having to make decisions which may adversely affect local citizens. The world is in a constant state of change, however, and the process of progress, growth, or change seems to always include people who are adversely affected.

The problem with H. B. 594 is that it provides a broad sweeping change by totally reversing the long standing legal principle of the "superior sovereign" doctrine . . . that the state should govern, or is "superior" to local government.(1) Nearly all states operate under the superior sovereign doctrine. We have been able to expand campus holdings to accommodate over 25,000 students since our inception in 1897 under the doctrine without incurring serious problems with local citizens.

While H. B. 594 reverses a well-established legal principle, we do not believe it will solve the concerns of the citizens adjacent to the U of M campus.

If the University determines that the purchase and use of the land on which the citizens reside is in the best interest of the state, H. B. 594 will not preclude that decision from being carried out. H. B. 594 will, however, make the acquisition much more costly to the state.

The proposed legislation does not preclude the University from purchasing property which may be offered for sale by residential homeowners living adjacent to campus property. Nor does H. B. 594 preclude the state from exercising eminent domain powers -- although the language is not very clear on this point as to the use of such land acquired through this process.

The purpose of the bill is to limit the use of land purchased by the state. In the Missoula situation, houses could not be used as offices, classrooms, or research facilities. About the only options would be for the campus to rent the houses as single family residences, leave the houses vacant (as they are now), or to sell and remove the houses, leaving vacant lots. Those may not be the most cost-efficient uses.

The committee should consider the possible future impact on other state agencies of reversing the superior sovereign doctrine. If the state subjects themselves to local zoning restrictions in the future, the chances of increased state/local conflict will most likely be increased. How about facilities relating to institutions, especially the prison? Who wants a prison or mental institution in their neighborhood? S.R.S and highways have facility needs all over the state. Consider the difficulty of locating a hazardous waste disposal plant if local zoning commissions could veto a state decision. A campus research proposal to study communicable diseases in either animals or humans could be thwarted by a local zoning restriction. In addition, county zoning boards could thwart the future efforts of the Fish and Game to manage its land effectively.

Section 3, subdivision (2) (a) would effectively give local government agencies, including zoning commissions and boards of adjustment, veto power over programs and facilities considered and authorized by this Legislature. It would allow legislatively authorized programs to be held hostage to local interests and politics. Local zoning regulations can be changed upon fifteen days notice and a public hearing.

The bill creates a conflict of sovereignties. It is also possible that it contributes an unconstitutional delegation of legislative powers. This Legislature, under our constitutional form of government is the only competent body to determine state interests. This bill at Section 3(2) (a)-(b) delegates to subordinate local agencies the power to determine state-wide interests and needs without specific guidelines as to how that power should be exercised. This in an infringement on the power which the people delegated to its elected legislative representatives.

The power to control the location of public services is the power to control their effectiveness and existance.

The use of the word "considered" in Section 3(2) would allow the local governmental body to avoid application of the statements presented in Section 3(2) (a)-(c). The dictionary definition of "consider" would not require the local governmental entity to actually apply those statements in reaching its decision as long as it reflected on or thought about them.

In summary, H. B. 594 will not guarantee that the problems of the Missoula residents will be solved. It will establish a new legal principle which is contrary to the "superior sovereign" doctrine. The risks of changing a legal principle which has served the state for all of this century far outweigh the benefits offered by H. B. 594.

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(1) Examples of Legal Cases upholding the "superior sovereign" doctrine:

Aviation Services, vs. Board of Adjustment (1956)
Kentucky Institution for Education of Blind vs. City of Louisville (1906)
Reber vs. South Lakewood Sanitary Dist. (1961)
Floyd vs. New York State Urban Development Corp. (1972)
City of Newark vs. University of Delaware (1973)
Board of Regents vs. City of Tempe (1960)
Rutgers State University vs. Piluso (1972)

JHN/tt

MINUTES OF THE MEETING
SENATE LOCAL GOVERNMENT COMMITTEE
MARCH 24, 1981

The meeting of the Local Government Committee was called to order by Chairman George McCallum on the above date in Room 405 at 7:30 p.m.

ROLL CALL: All members were present with Senators Conover, Van Valkenburg and Thomas coming in late due to other meetings.

CONSIDERATION OF HOUSE BILL 555:

AN ACT AMENDING SECTION 19-12-301, MCA, TO REQUIRE PAYMENT TO THE VOLUNTEER FIREFIGHTERS' COMPENSATION FUND FROM THE INSURANCE PREMIUM TAX BEFORE PAYMENT TO THE DISABILITY AND PENSION FUNDS OF THE FIRE DEPARTMENT RELIEF ASSOCIATIONS.

Representative Manning, District No. 35, said they changed the wording on line 17, striking "after" and inserting "before". On line 18 they have stricken "have first been" and inserted "are". Under present law the state contributes to the firemen's compensation fund 5% of the total premium tax. If the compensation plan is to be funded out of the balance after payments to the first and second class cities, they would receive less than 5%. This bill alleviates the problem. Most fire districts being organized are comprised of younger persons, hopefully the fund will have sufficient money to support their compensation fund. (See attached Exhibit A.)

Rick Tucker, State Auditor's office, is the dispersing agent to the fire association. If this bill isn't passed, any increase in paid firemen's benefits will cause a 5% deduction from the volunteer firemen's fund. This switches it around to pay the volunteers 5% and the balance will be paid out of other retirement associations.

Ray Blehm, legislative delegate from the Montana Firemen's Association, supports the bill.

Art Korn, secretary/treasurer of the Montana Volunteer Firemen's Association, supports the bill.

Jim Turcotte, Public Employees Retirement Division, spoke in support of the bill. (See attached Exhibit B.)

R. A. Ellis, Montana Volunteer Firemen's Association, supports the bill. Benefits derived from this pension to the firemen carry over to the people being protected. We will have better quality firefighers.

Senator Van Valkenburg asked about any alternatives.

Senator Thomas said this is only for one area of the state. It is not fair for the others.

The motion carried with Senator Van Valkenburg being opposed.

Senator Van Valkenburg was going to send out a minority report on the bill.

DISCUSSION OF HOUSE BILL 594: Senator Thomas moved the bill be not concurred in.

Senator Van Valkenburg made a substitute motion that the bill be concurred in. He said this is important in the sense that we are saying in this bill that governments, in particular state government, are not going to run roughshod over local citizens and zoning laws they have adopted. This does not act as a barrier to the government but does force state government to realize the people have legitimate interest in protecting the values of their own property. On page 1, lines 17 and 18 the House has provided clearly that group homes are going to be completely exempted from this law. That has been a problem in the past. On page 2, lines 1 through 4 provides that the application of zoning laws cannot have the effect of excluding state or local governments from the jurisdictional area. It goes through a list of tests that must be applied for and what zoning should be applied, also the variances that may be granted. The bill provides protection. The only legitimate concern by the university was the state would end up having to pay building permit fees and other fees involved in the zoning process. That is not the intent of this legislation. He has an amendment that will cure that if it is a big concern to anyone.

Senator Thomas said with regard to long-range planning it would take thousands of dollars for each building the state wanted to put up. The effects would be ongoing for a number of years. The problem exists only in Missoula.

Senator Van Valkenburg did not agree, it is happening in Billings also. This will not add thousands of dollars to the cost of long-range building. Law suits will result from the state government ignoring local zoning laws.

It was agreed to wait until the next meeting to decide on this bill.

DISPOSITION OF HOUSE BILL 375: Senator Ochsner moved the bill be not concurred in.

The motion carried with Senator Hammond being opposed.

MINUTES OF THE MEETING
SENATE LOCAL GOVERNMENT COMMITTEE
MARCH 26, 1981

The meeting of the Local Government Committee was called to order by Chairman George McCallum on the above date in Room 405 at 12:15 p.m.

ROLL CALL: All members were present.

DISPOSITION OF HOUSE BILL 558: Senator Van Valkenburg made a motion to adopt the amendments to the bill. The motion carried unanimously.

Senator Van Valkenburg moved the bill be concurred in as amended. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 765: Senator Thomas handed out the amendments the subcommittee came up with for the bill. On page 1 they decided to change 15% to 10%. Notice of what an average customer would pay has to be sent within the monthly statement and also posted in the newspaper. On page 3 they have reduced 15% to 10%. The rates may be appealed to district court. If distribution is outside the city they cannot raise rates disproportionately. This is a compromise.

Debbie Schmidt said there was a mistake in the amendments, she would have to add an amendment about requiring people outside of the city to be charged the same amount.

Senator Ochsner asked if 10% was going to keep up with inflation.

Senator Thomas said most people were concerned that 15% was too high, perhaps in two years we can raise it.

Senator McCallum asked Dan Mizner if there was to be an effective date.

Mr. Mizner said he would like July 1, 1981 as the effective date.

Senator McCallum said that was in the bill and it remains effective through July 1, 1983.

Mr. Mizner said 12% to 15% is looking at the cost of living and growth of the cities.

Senator Thomas moved the amendments be adopted.

Senator Van Valkenburg asked that the vote be separated for amendments 2 and 7.

Senator Thomas said there was a major problem with the 15%. He

Ms. Schmidt answered no, it is permissive. That is provided on page 6, line 11.

Senator Hammond moved the bill, as amended, be not concurred in.

Senator Van Valkenburg said Representative Kitselman said they can do it but they must hold separate meetings for the zoning commission and another for the county commissioners. This allows them to hold combined meetings.

Senator O'Hara said Cliff Christian said 33% of housing costs are caused by government regulations.

Senator Hammond's motion was opposed by Senators Van Valkenburg, O'Hara and Conover. Senators Hammond, Thomas, McCallum and Ochsner voted aye.

Senator Van Valkenburg moved to reconsider action on HB575 so it would not have to be amended and killed. The motion carried unanimously.

Senator Van Valkenburg moved the bill be returned to the form in which we received it from the House. The motion carried unanimously.

Senator Van Valkenburg moved that HB575 be not concurred in. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 760: Senator Van Valkenburg moved the bill be concurred in. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 790: Senator Thomas said line 25 on page 2 needs amended.

Debbie Schmidt agreed, it needs to be subject to the provisions of HB765.

Senator Thomas moved to amend the bill to coordinate it with HB765. The motion carried unanimously.

Senator Hammond moved the bill be concurred in as amended. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 594: Senator Van Valkenburg moved the bill be concurred in.

Senator Thomas said this has connotations beyond the university system.

Senator Van Valkenburg said they are exempted.

Senator Thomas asked where the exemption was for group homes.

Senator Van Valkenburg answered on page 1, line 17 it says "except as provided in 76-2-314". He said he would amend the bill to add a section which would exempt any state agency from having to pay building permit fees or any fee related to building construction or zoning or anything of that nature. He would put that amendment in on the floor prior to action so it would be provided for.

Senator Hammond said it restricts the use of any property they may purchase.

Senator Van Valkenburg said it would be just as you are restricted now. The state should not receive better treatment than individuals.

Senator Thomas said a master plan could be adopted to prevent them from doing a number of things.

Senator Van Valkenburg said on page 2 the application of zoning cannot exclude them from the area.

Senator McCallum asked if this would include junior colleges.

Senator Van Valkenburg replied it would apply to any government agency, not just the university system.

Senator Thomas said we have to look at the common good of all citizens.

Senator Van Valkenburg moved to amend the bill to strike Section 2 from the bill. It would require a public hearing before the state can come in and disregard local zoning regulations. Taking Section 2 out is taking out the guts of the bill so we would have to amend the title also. The state ought to take the people's opinions from the locality into consideration.

Senator Thomas said you are providing a new section and a new act so they will come back next session to put the rest into law. To incorporate it into an existing section would be the only way.

Senator Van Valkenburg's motion failed with Senators Thomas, O'Hara, McCallum, Hammond and Ochsner being opposed. Senators Van Valkenburg and Conover were in favor of the amendment.

Senator Hammond made a substitute motion to Senator Van Valkenburg's first motion and moved that the bill be not concurred in. Senators Van Valkenburg and Conover were opposed, all others voted aye.

Senator Van Valkenburg wants a minority report on the bill.

STANDING COMMITTEE REPORT

MINORITY REPORT

March 26, 19 81

MR. PRESIDENT

We, your committee on LOCAL GOVERNMENT

having had under consideration HOUSE Bill No. 594

KEMMIS (MCCALLUM)

Respectfully report as follows: That HOUSE Bill No. 594

BE CONCURRED IN
~~XXXXXX~~
~~DO PASS~~

Chairman.

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

March 26 19 91

MR. PRESIDENT

We, your committee on LOCAL GOVERNMENT

having had under consideration HOUSE Bill No. 594

KEMMIS (McCALLUM)

Respectfully report as follows: That HOUSE Bill No. 594

BE NOT CONCURRED IN

~~DO PASS~~

JRF

GEORGE MCCALLUM, Chairman.

STATE PUB. CO.
Helena, Mont.

March 31, 1981

SENATE COMMITTEE OF THE WHOLE

Proposed amendments to House Bill 594, third reading copy, as follows:

1. Title, lines 5 and 6.
Following: "AGENCIES TO"
Strike: "CONFORM TO LOCAL ZONING REGULATIONS"
Insert: "BE SUBJECT TO A PUBLIC HEARING"

2. Page 1, line 17 through page 2, line 25.
Following: "~~The~~"
Strike: the remainder of these lines.
Insert: "Whenever an agency proposes to use public land contrary to local zoning regulations a public hearing, as defined below, shall be held.

(1) The local board of adjustments, as provided in Title 76, chapter 2, shall hold a hearing within 30 days of the date the agency gives notice to the board of its intent to develop land contrary to local zoning regulations.

(2) The board shall have no power to deny the proposed use but shall act only to allow a public forum for comment on the proposed use"

HOUSE BILL NO. 594

INTRODUCED BY KEMMIS, NORMAN

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING LAND DEVELOPMENT AND USE BY GOVERNMENTAL AGENCIES TO ~~CONFORM TO LOCAL ZONING REGULATIONS~~ BE SUBJECT TO A PUBLIC HEARING."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definitions. As used in [this act], the following definitions apply:

(1) "Agency" means a board, bureau, commission, department, an authority, or other entity of state or local government.

(2) "Local zoning regulations" means zoning regulations adopted pursuant to Title 76, chapter 2.

Section 2. Local zoning regulations to apply to agencies. ~~The~~ EXCEPT AS PROVIDED IN 76-2-314 AND FOR RIGHTS-OF-WAY AND EASEMENTS, THE ~~development and use of land held by an agency shall comply with local zoning regulations if:~~

~~(1) zoning has been adopted pursuant to Title 76, chapter 2;~~

~~(2) zoning has been adopted in compliance with a master plan adopted as provided in Title 76, chapter 1, part 6; and~~

~~(3) the application of such zoning does not have the effect of excluding any state or local government institution from the jurisdictional area for which the local zoning regulations have been adopted.~~

~~Section 3. Public interest to be considered in review of agency zoning requests. (1) In reviewing a request by an agency for zoning, rezoning, or variance, the governing body, zoning commission, and board of adjustment of the unit of local government whose regulations govern shall review the request in accordance with the provisions of Title 76, chapter 2.~~

~~(2) The following tests of public interest shall also be considered when reviewing a zoning request by an agency:~~

~~(a) the public benefit to be served by the intended use, including regional and statewide interests;~~

~~(b) the effect compliance with local land use regulations would have on the applying agency in its effort to serve the public;~~

~~(c) the availability of alternative locations for the proposed development or use of land.~~

~~(3) The provisions of subsection (2) do not apply to review of zoning requests of an agency for land that has been acquired under a long-range development plan but that is not being used for its eventually intended public purpose.~~ WHENEVER AN AGENCY PROPOSES TO USE PUBLIC LAND

REFERENCE BILL

CONTRARY TO LOCAL ZONING REGULATIONS A PUBLIC HEARING, AS DEFINED BELOW, SHALL BE HELD.

(1) THE LOCAL BOARD OF ADJUSTMENTS, AS PROVIDED IN TITLE 76, CHAPTER 2, SHALL HOLD A HEARING WITHIN 30 DAYS OF THE DATE THE AGENCY GIVES NOTICE TO THE BOARD OF ITS INTENT TO DEVELOP LAND CONTRARY TO LOCAL ZONING REGULATIONS.

(2) THE BOARD SHALL HAVE NO POWER TO DENY THE PROPOSED USE BUT SHALL ACT ONLY TO ALLOW A PUBLIC FORUM FOR COMMENT ON THE PROPOSED USE.

-End-